

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2987

Introduced by Assembly Members Nunez and Levine
(Principal coauthors: Assembly Members McCarthy and Plescia)

February 24, 2006

An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

Existing law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law provides that cable and video service providers comply with specified customer service standards and performance standards.

This bill would establish a procedure for ~~state-issued authorizations~~ *the issuance of state franchises* for the provision of ~~cable video service or video~~, which would be defined to include cable service and open-video systems, that would be administered by the Department of ~~Corporations~~ *Consumer Affairs*. The department would be the sole franchising authority of ~~state-issued authorizations~~ *for state franchises* to provide ~~cable or video services~~. The bill would require any person who seeks to provide ~~cable service or video service~~ in this state to file

an application with the department for a ~~state-issued authorization~~. ~~Current franchise holders would be eligible to apply for state-issued authorizations on the expiration of their current franchise agreements~~ *state franchise*. Cities, counties, or cities and counties would receive *state franchise* fees for cable or video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. The bill would require these local agencies to permit the installation of networks by holders of ~~state-issued authorizations~~ *state franchises* and would preclude enforcement of standards by the local agencies. *The bill would prescribe the extent of the obligation of state franchise holders to provide public, educational, and government channels. The bill would prescribe certain customer service and protection standards and penalties for material breaches of those standards. The bill would require any state franchise holder employing more than 750 employees to make an annual report of specified information to the department.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.7 (commencing with Section 53058) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4
5 Article 3.7. The Digital Infrastructure and Video Competition
6 Act of 2006
7

8 53058. This act shall be known and may be cited as the
9 Digital Infrastructure and Video Competition Act of 2006.

10 53058.1. (a) This article shall be known and may be cited as
11 the Digital Infrastructure and Video Competition Act of 2006.

12 (b) The Legislature finds and declares all of the following:

13 (1) Video and cable services provide numerous benefits to all
14 Californians including access to a variety of news, public
15 information, education, and entertainment programming.

16 (2) Increased competition in the cable and video service sector
17 provides consumers with more choice, lowers prices, speeds the
18 deployment of new communication and broadband technologies,
19 creates jobs, and benefits the California economy.

1 (3) To promote competition, the state should establish a
2 state-issued franchise authorization process that allows market
3 participants to use their networks and systems to provide video,
4 voice, and broadband services to all residents of the state.

5 (4) Legislation to develop this new process should adhere to
6 the following principles.

7 (i) Create a fair and level playing field for all market
8 competitors that does not disadvantage or advantage one service
9 provider or technology over another.

10 (ii) Promote the widespread access to the most technologically
11 advanced cable and video services to all California communities
12 in a nondiscriminatory manner regardless of socioeconomic
13 status.

14 (iii) Protect local government revenues and their control of
15 public rights of way.

16 (iv) Require market participants to comply with all applicable
17 consumer protection laws.

18 (v) Complement efforts to increase investment in broadband
19 infrastructure and close the digital divide.

20 (vi) Continue access to and maintenance of the public,
21 education, and government (PEG) channels.

22 (5) *Telephone corporations providing video service pursuant*
23 *to this article shall not subsidize the cost of deploying network*
24 *that is used to provide video service and other costs necessary to*
25 *offer video service with revenue derived from the offering of*
26 *basic telephone services.*

27 53058.2. For purposes of this article, the following words
28 have the following meanings:

29 (a) “Cable operator” means any person or group of persons
30 that either provides cable service over a cable system and
31 directly, or through one or more affiliates, owns a significant
32 interest in a cable system; or that otherwise controls or is
33 responsible for, through any arrangement, the management and
34 operation of a cable system, as set forth in Section 522(5) of Title
35 47 of the United States Code.

36 (b) “Cable service” is defined as the one-way transmission to
37 subscribers of either video programming, or other programming
38 service, and subscriber interaction, if any, that is required for the
39 selection or use of video programming or other programming

1 service, as set forth in Section 522(6) of Title 47 of the United
2 States Code.

3 (c) “Cable system” is defined as set forth in Section 522(7) of
4 Title 47 of the United States Code.

5 (d) “Department” means the Department of ~~Corporations~~
6 *Consumer Affairs*.

7 (e) “Franchise” means an initial authorization, or renewal of
8 an authorization, issued by a franchising entity, regardless of
9 whether the authorization is designated as a franchise, permit,
10 license, resolution, contract, certificate, agreement, or otherwise,
11 that authorizes the construction and operation of a cable system
12 in public rights-of-way.

13 (f) “Franchising entity” means the city, county, or city and
14 county entitled to require franchises and impose fees on cable
15 operators, as set forth in Section 53066.

16 (g) “Incumbent cable operator” means the cable operator
17 serving the largest number of cable subscribers in a particular
18 city, county, or city and county franchise area on the effective
19 date of this article.

20 (h) “Local entity” means any city, county, or city and county
21 within the state within whose jurisdiction a holder of a
22 state-issued authorization under this article may provide cable
23 service or video service.

24 (i) “Network” means a component of a facility that is wholly
25 or partly physically located within a public right-of-way and that
26 is used to provide video service, cable service, or voice or data
27 services.

28 (j) “*Open-video system*” or “*OVS*” means those services set
29 forth in Section 573 of Title 47 of the United States Code.

30 (k) “*OVS operator*” means any person or group of persons
31 that either provides cable service over an open-video system
32 directly, or through one or more affiliates, owns a significant
33 interest in an open-video system, or that otherwise controls or is
34 responsible for, through any arrangement, the management of an
35 open-video system.

36 (l)

37 (l) “Public right-of-way” means the area along and upon any
38 public road or highway, or along or across any of the waters or
39 lands within the state.

1 (m) “State franchise” means a franchise that is issued
2 pursuant to this article.

3 ~~(k)~~

4 (n) “Subscriber” means a person who lawfully receives cable
5 service or video service from the holder of a state-issued
6 authorization or franchise for a fee.

7 ~~(l)~~

8 (o) “Video programming” means programming provided by,
9 or generally considered comparable to programming provided
10 by, a television broadcast station, as set forth in Section 522(20)
11 of Title 47 of the United States Code.

12 ~~(m)~~

13 (p) “Video service” means video programming services, *cable*
14 *service, or OVS service* provided through ~~wireline~~ facilities
15 located at least in part in public rights-of-way without regard to
16 delivery technology, including Internet protocol technology. This
17 definition does not include any video programming provided by
18 a commercial mobile service provider defined in Section 322(d)
19 of Title 47 of the United States Code *or video programming*
20 *provided via an Internet access service as that term is defined in*
21 *Section 231(e)(4) of Title 47 of the United States Code.*

22 ~~(n)~~

23 (q) “Video service provider” means an entity providing video
24 service. This term does not include ~~a~~ *an incumbent cable*
25 *operator.*

26 53058.3. (a) The Department of ~~Corporations~~ *Consumer*
27 *Affairs* is the sole franchising authority for a ~~state-issued~~
28 ~~authorization~~ *state franchise* to provide ~~cable service or~~ video
29 service under this article. Neither the department nor any
30 franchising entity or other local entity of the state may require the
31 holder of a ~~state-issued authorization~~ *state franchise* to obtain a
32 separate franchise or otherwise impose any fee or requirement on
33 any holder of a ~~state-issued authorization~~ *state franchise* except
34 as expressly provided in this article. Sections 53066, 53066.01,
35 53066.2, and 53066.3 shall not apply to holders of a ~~state-issued~~
36 ~~authorization~~ *state franchise.*

37 (b) The application process described in subdivisions (d) and
38 (e) and the authority granted to the department under this section
39 shall not exceed the provisions set forth in this section.

(c) Any person *or corporation* who seeks to provide cable service or video service in this state after the effective date of this article shall file an application for a ~~state-issued authorization~~ *state franchise* with the department. The department may impose a fee on the applicant that shall not exceed the actual and reasonable costs of processing the application and shall not be levied for general revenue purposes.

(d) The application for a ~~state-issued authorization~~ *state franchise* shall be made on a form prescribed by the department and shall include all of the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms all of the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering cable service or video service in this state.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

(i) A statement that the applicant will not discriminate in the provision of video or cable services as provided in Section 53058.7.

(ii) A statement that the applicant will abide by all applicable consumer protection laws and rules as provided in Section 53058.8.

(iii) A statement that the applicant will remit the fee required by Section 53058.4 to the local entity.

(iv) A statement that the applicant will provide PEG channels as required by Section 53058.5.

(C) That the applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, *including, but not limited to, payment of applicable encroachment, permit, and inspection fees.*

(D) *That the applicant will concurrently deliver a copy of the application to any local entity where the applicant will provide service.*

(2) The applicant's legal name and any name under which the applicant does or will do business in this state.

1 (3) The address and telephone number of the applicant's
2 principal place of business, along with contact information for
3 the person responsible for ongoing communications with the
4 department.

5 (4) The names and titles of the applicant's principal officers.

6 (5) The legal name, address, and telephone number of the
7 applicant's parent company, if any.

8 (6) A description of the service area footprint to be served
9 including the ~~social-economic~~ *socioeconomic* information of all
10 residents within the service area footprint.

11 (7) If the applicant is a telephone corporation, as defined in
12 Section 234 of the Public Utilities Code, a description of the
13 territory in which the company provides telephone service. The
14 description shall include ~~social-economic~~ *socioeconomic*
15 information of all residents within in the telephone corporation's
16 service territory.

17 (8) The expected date for the deployment of video service in
18 each of the areas identified in paragraph (6).

19 (9) *Adequate assurance that the applicant possesses the*
20 *financial, legal, and technical qualifications necessary to*
21 *construct and operate the proposed system and promptly repair*
22 *any damage to the public right-of-way caused by the applicant.*

23 (e) (1) The department shall notify an applicant for a
24 ~~state-issued authorization~~ *state franchise and any affected local*
25 *entities* whether the applicant's affidavit described by subdivision
26 (d) is complete or incomplete before the 30th calendar day after
27 the applicant submits the affidavit.

28 (2) If the department finds the affidavit is complete, it shall
29 issue a ~~certificate of state-issued authorization~~ *state franchise*
30 before the 14th calendar day after that finding.

31 (3) If the department finds that the application is incomplete, it
32 shall specify with particularity the items in the application that
33 are incomplete and permit the applicant to amend the application
34 to cure any deficiency. The department shall have 30 calendar
35 days from the date the application is amended to determine its
36 completeness.

37 (4) The failure of the department to notify the applicant of the
38 completeness or incompleteness of the applicant's affidavit
39 before the 44th calendar day after receipt of an affidavit shall be

1 deemed to constitute issuance of the certificate applied for
2 without further action on behalf of the applicant.

3 (f) ~~The state-issued authorization~~ *state franchise* issued by the
4 department shall contain all of the following:

5 (1) A grant of authority to provide ~~cable service or~~ video
6 service, ~~or both in exchange for the franchise fee required in~~
7 *Section 53058.4*, in the service area footprint as requested in the
8 application.

9 (2) A grant of authority to use the public rights-of-way in the
10 delivery of ~~that video~~ service, subject to the laws of this state.

11 (3) A statement that the grant of authority is subject to lawful
12 operation of the cable service or video service by the applicant or
13 its successor in interest.

14 (g) ~~The state-issued authorization~~ *state franchise* issued by the
15 department may be terminated by the ~~cable operator or~~ video
16 service provider by submitting notice to the department.

17 (h) Subject to the notice requirements of this article, a
18 ~~state-issued authorization~~ *state franchise* may be transferred to
19 any successor in interest of the holder to which the certificate is
20 originally granted, *provided that the transferee first submits all of*
21 *the information required of the applicant by this section to the*
22 *department.*

23 (i) In connection with, or as a condition of, receiving a
24 ~~state-issued authorization~~ *state franchise*, the department shall
25 require a holder to notify the department and any applicable local
26 entity within 14 business days of any of the following changes
27 involving the holder or the ~~state-issued authorization~~ *state*
28 *franchise*:

29 (1) Any transaction involving a change in the ownership,
30 operation, control, or corporate organization of the holder,
31 including a merger, an acquisition, or a reorganization.

32 (2) A change in the holder's legal name or the adoption of, or
33 change to, an assumed business name. The holder shall submit to
34 the department a certified copy of either of the following:

35 (A) ~~The amended state-issued authorization~~ *state franchise*.

36 (B) The certificate of assumed business name.

37 (3) A change in the holder's principal business address or in
38 the name of the person authorized to receive notice on behalf of
39 the holder.

1 (4) Any transfer of the ~~state-issued authorization~~ *state*
2 *franchise* to a successor in interest of the holder. The holder shall
3 identify the successor in interest to which the transfer is made.

4 (5) The termination of any ~~state-issued authorization~~ *state*
5 *franchise* issued under this article. The holder shall identify both
6 of the following:

7 (A) The number of customers in the service area covered by
8 the ~~state-issued authorization~~ *state franchise* being terminated.

9 (B) The method by which the holder's customers were notified
10 of the termination.

11 (6) A change in one or more of the service areas of this article
12 that would increase or decrease the territory within the service
13 area. The holder shall describe the new boundaries of the affected
14 service areas after the proposed change is made.

15 (j) As a condition of receiving a ~~state-issued authorization~~
16 *state franchise*, the holder shall notify all applicable local entities
17 that the local entity is included in the holder's service area under
18 the ~~state-issued authorization~~ *state franchise* being issued and
19 that the holder intends to provide video ~~or cable~~ service in the
20 local entity's jurisdiction. The holder shall give the notice
21 required under this subdivision not later than 10 days before the
22 holder begins providing video ~~or cable~~ service in the local
23 entity's jurisdiction.

24 (k) The department shall develop information guides and other
25 tools to help educate local entities and other interested parties
26 about the various provisions of this article.

27 53058.4. (a) The holder of a ~~state-issued authorization~~ *state*
28 *franchise* that offers ~~cable service or~~ video service within the
29 jurisdiction of the local entity shall calculate and remit to the
30 local entity a ~~state-issued authorization~~ *state franchise* fee, as
31 provided in this section. The obligation to remit the ~~state-issued~~
32 ~~authorization~~ *state franchise* fee to a local entity begins
33 immediately upon provision of ~~cable or~~ video service within that
34 local entity's jurisdiction. However, the remittance shall not be
35 due until the time of the first quarterly payment required under
36 subdivision (g) that is at least 180 days after the provision of
37 service began. The fee remitted to a city or city and county shall
38 be based on gross revenues earned within that jurisdiction. The
39 fee remitted to a county shall be based on gross revenues earned
40 within the unincorporated area of the county. No fee under this

1 section shall become due unless the local entity provides
2 documentation to the holder of the ~~state-issued authorization~~
3 *state franchise* supporting the percentage paid by the incumbent
4 cable operator serving the area within the local entity's
5 jurisdiction, as provided below. The fee shall be calculated as a
6 percentage of the holder's gross revenues, as defined in
7 subdivision (d).

8 (b) The ~~state-issued authorization~~ *state franchise* fee shall be a
9 percentage of the holder's gross revenues, as defined in
10 subdivision (d), as follows:

11 (1) If there is an incumbent cable operator, *the fee shall not be*
12 *more than* 5 percent of the holder's gross revenues or the
13 percentage applied by the local entity to the gross revenue of the
14 incumbent cable operator, whichever is lesser.

15 (2) If there is no incumbent cable operator or upon the
16 expiration of the incumbent cable operator's franchise, a local
17 entity may, by ordinance, set the percentage applied to the gross
18 revenues of all ~~cable operators~~ and video service providers,
19 provided that the fee shall not exceed 5 percent of gross revenues
20 and shall be applied equally to all ~~cable operators~~ and video
21 service providers in the local entity's jurisdiction.

22 (c) No local entity or any other political subdivision of this
23 state may demand any additional fees or charges or other
24 remuneration of any kind from the holder of a ~~state-issued~~
25 ~~authorization~~ *state franchise based solely on its status as a*
26 *provider of video or cable services* other than as set forth in this
27 section and may not demand the use of any other calculation
28 method or definition of gross revenues. However, nothing in this
29 section shall be construed to limit a local entity's ability to
30 impose utility user taxes *and other generally applicable taxes,*
31 *fees, and charges* under other applicable provisions of state law
32 *that are applied in a nondiscriminatory and competitively neutral*
33 *manner.*

34 (d) For purposes of this section, the term "gross revenues"
35 means all revenue actually received by the holder of a
36 ~~state-issued authorization~~ *state franchise*, as determined in
37 accordance with generally accepted accounting principles, that is
38 derived from the operation of the holder's network to provide
39 cable or video service within the jurisdiction of the local entity,
40 including all of the following:

1 (1) All charges billed to subscribers for any and all cable
2 service or video service provided by the holder of a ~~state-issued~~
3 ~~authorization~~ *state franchise, including all revenue related to*
4 *programming provided to the subscriber, equipment rentals, late*
5 *fees, and not sufficient fund fees.*

6 (2) Any fees imposed on the holder of a ~~state-issued~~
7 ~~authorization~~ *state franchise* by this section that are passed
8 through to, and paid by, the subscribers.

9 (3) Compensation received by the holder of a ~~state-issued~~
10 ~~authorization~~ *state franchise* that is derived from the operation of
11 the holder's network to provide cable service or video service
12 with respect to commissions that are paid to the holder of a
13 state-issued authorization as compensation for promotion or
14 exhibition of any products or services on the holder's network,
15 such as a "home shopping" or similar channel, subject to
16 paragraph (4) of subdivision (e).

17 (4) A pro rata portion of all revenue derived by the holder of a
18 ~~state-issued authorization~~ *state franchise* or its affiliates pursuant
19 to compensation arrangements for advertising derived from the
20 operation of the holder's network to provide ~~cable service or~~
21 video service within the jurisdiction of the local entity, subject to
22 paragraph (1) of subdivision (e). The allocation shall be based on
23 the number of subscribers in the local entity divided by the total
24 number of subscribers in relation to the relevant regional or
25 national compensation arrangement.

26 (e) For purposes of this section, the term "gross revenue" set
27 forth in subdivision (d) does not include any of the following:

28 (1) Amounts not actually received, even if billed, such as bad
29 debt; refunds, rebates, or discounts to subscribers or other third
30 parties; or revenue imputed from the provision of cable services
31 or video services for free or at reduced rates to any person as
32 required or allowed by law, including, but not limited to, the
33 provision of these services to public institutions, public schools,
34 governmental agencies, or employees other than forgone revenue
35 chosen not to be received in exchange for trades, barter, or
36 services, or other items of value.

37 (2) Revenues received by any affiliate or any other person in
38 exchange for supplying goods or services used by the holder of a
39 ~~state-issued authorization~~ *state franchise* to provide cable
40 services or video services. However, revenue received by an

1 affiliate of the holder from the affiliate's provision of cable or
2 video service shall be included in gross revenue as follows:

3 (A) To the extent that treating the revenue as revenue of the
4 affiliate, instead of revenue of the holder, would have the effect
5 of evading the payment of fees that would otherwise be paid to
6 the local entity.

7 (B) The revenue is not otherwise subject to fees to be paid to
8 the local entity.

9 (3) Revenue derived from services classified as noncable
10 services or nonvideo services under federal law, including, but
11 not limited to, revenue derived from telecommunications services
12 and information services, *other than cable services or video*
13 *services*, and any other revenues attributed by the holder of a
14 ~~state-issued authorization~~ *state franchise* to noncable services or
15 nonvideo services in accordance with Federal Communications
16 Commission rules, regulations, standards, or orders.

17 (4) Revenue paid by subscribers to "home shopping" or
18 similar networks directly from the sale of merchandise through
19 any home shopping channel offered as part of the cable services
20 or video services. However, commissions or other compensation
21 paid to the holder of a ~~state-issued authorization~~ *state franchise*
22 by "home shopping" or similar networks for the promotion or
23 exhibition products or services shall be included in gross
24 revenue.

25 (5) Revenue from the sale of cable services or video services
26 for resale in which the reseller is required to collect a fee similar
27 to the ~~state-issued authorization~~ *state franchise* fee from the
28 reseller's customers.

29 (6) Amounts billed to and collected from subscribers to
30 recover any tax, fee, or surcharge imposed by any governmental
31 entity on the holder of a ~~state-issued authorization~~ *state*
32 *franchise*, including, but not limited to, sales and use taxes, gross
33 receipts taxes, excise taxes, utility users taxes, public service
34 taxes, communication taxes, and any other fee not imposed by
35 this section.

36 (7) Revenue from the sale of capital assets or surplus
37 equipment not used by the purchaser to receive cable services or
38 video services from the seller of those assets or surplus
39 equipment.

1 (8) Revenue from directory or Internet advertising revenue,
2 including, but not limited to, yellow pages, white pages, banner
3 advertisement, and electronic publishing.

4 (9) Revenue received as reimbursement by programmers of
5 marketing costs incurred by the holder of a ~~state-issued~~
6 ~~authorization~~ *state franchise* for the introduction of new
7 programming.

8 (10) Security deposits received from subscribers, excluding
9 security deposits applied to the outstanding balance of a
10 subscriber's account and thereby taken into revenue.

11 (f) For purposes of this section, in the case of a ~~cable service~~
12 ~~or~~ video service that may be bundled or integrated functionally
13 with other services, capabilities, or applications, the ~~state-issued~~
14 ~~authorization~~ *state franchise* fee shall be applied only to the gross
15 revenue, as defined in subdivision (d), attributable to cable
16 service or video service, as reflected on the books and records of
17 the holder kept in the regular course of business in accordance
18 with generally accepted accounting principles and Federal
19 Communications Commission or Public Utilities Commission
20 rules, regulations, standards, and orders, as applicable.

21 (g) The ~~state-issued authorization~~ *state franchise* fee shall be
22 remitted to the applicable local entity quarterly, within 45 days
23 after the end of the quarter for the preceding calendar quarter.
24 Each payment shall be accompanied by a summary explaining
25 the basis for the calculation of the ~~state-issued authorization fee.~~
26 *state franchise fee. If the holder does not pay the franchise fee*
27 *when due, the holder shall pay a late payment charge at a rate*
28 *per year equal to the highest prime lending rate during the*
29 *period of delinquency, plus 1 percent. If the holder has overpaid*
30 *the franchise fee, it may deduct the overpayment from its next*
31 *quarterly payment.*

32 (h) Not more than once annually, a local entity may examine
33 the business records of a holder of a ~~state-issued authorization~~
34 *state franchise* to the extent reasonably necessary to ensure
35 compensation in accordance with subdivision (a). ~~Each~~ *The*
36 *holder shall keep all business records reflecting any gross*
37 *revenues, even if there is a change in ownership, for at least four*
38 *years after those revenues are recognized by the holder on its*
39 *books and records. If the examination discloses that the holder*
40 *has underpaid franchise fees by more than 5 percent during the*

1 *examination period, the holder shall pay all of the reasonable*
2 *and actual costs of the examination. If the examination discloses*
3 *that the holder has not underpaid franchise fees, the local entity*
4 *shall pay all of the reasonable and actual costs of the*
5 *examination. In every other instance, each party shall bear its*
6 *own costs of the examination. Any claims by a local entity that*
7 *compensation is not in accordance with subdivision (a), and any*
8 *claims for refunds or other corrections to the remittance of the*
9 *holder of a state-issued authorization, shall be made within three*
10 *years and 45 days of the end of the quarter for which*
11 *compensation is remitted, or three years from the date of the*
12 *remittance, whichever is later. Either a local entity or the holder*
13 *may, in the event of a dispute concerning compensation under*
14 *this section, bring an action in a court of competent jurisdiction.*

15 (i) ~~The holder of a state-issued authorization~~ *state franchise*
16 *may identify and collect the amount of the—state-issued*
17 ~~authorization~~ *state franchise fee as a separate line item on the*
18 *regular bill of each subscriber.*

19 53058.5. (a) ~~The holder of a state-issued authorization~~ *state*
20 *franchise shall designate a sufficient amount of capacity on its*
21 *network to allow the provision of—a comparable number the same*
22 *number of PEG channels—or hours of programming, at the*
23 ~~holder's discretion,~~ *that the incumbent cable operator has*
24 *activated and provided within the local entity under the terms of*
25 *any franchise in effect in the local entity as of the effective date*
26 *of this article. For the purposes of this section, a PEG channel is*
27 *deemed activated if it is being utilized for PEG programming*
28 *within the municipality for at least eight hours per day. The*
29 *holder shall have—12 six months from the date the local entity*
30 *requests the PEG channels to designate the capacity. However,*
31 ~~the—12-month~~ *six-month period shall be tolled by any period*
32 *during which the designation or provision of PEG channel*
33 *capacity is technically infeasible, including any failure or delay*
34 *of the incumbent cable operator to make adequate*
35 *interconnection available, as required by this subdivision.*

36 (b) *The PEG channels shall be for the exclusive use of the*
37 *local entity or its designee to provide public, educational, and*
38 *governmental channels. PEG channels shall be used only for*
39 *noncommercial purposes. However, advertising or sponsorship*
40 *recognition may be carried on the channels for the purpose of*

1 *funding the operation of the channels. The PEG channels shall*
2 *all be carried on the basic service tier. To the extent feasible,*
3 *PEG channels shall not be separated numerically from other*
4 *channels carried on the basic service tier and the channel*
5 *numbers for the PEG channels shall be the same channel*
6 *numbers used by the incumbent cable operator unless prohibited*
7 *by federal law. After the initial designation of PEG channel*
8 *numbers, the channel numbers shall not be changed without the*
9 *agreement of the local entity unless the change is required by*
10 *federal law. Each channel shall be capable of carrying a*
11 *National Television System Committee (NTSC) television signal.*

12 ~~(b)~~

13 *(c) If no PEG channels are activated and provided within the*
14 *local entity as of the effective date of this article, a local entity*
15 *whose jurisdiction lies within the authorized service area of the*
16 *holder of a state-issued authorization state franchise may request*
17 *the holder to designate not more than a total of three PEG*
18 *channels in a locality with a population of more than 50,000, or*
19 *not more than a total of two PEG channels in a locality with a*
20 *population of less than 50,000, as determined by the last*
21 *decennial census.*

22 *The holder shall have*~~12~~ *six months from the date of the*
23 *request to designate the capacity. However, the*~~12-month~~
24 *six-month period shall be tolled by any period during which the*
25 *designation or provision of PEG channel capacity is technically*
26 *infeasible, including any failure or delay of the incumbent cable*
27 *operator to make adequate interconnection available, as required*
28 *by this subdivision.*

29 *(d) The holder shall provide an additional PEG channel when*
30 *the locally produced, nonduplicated programming televised on a*
31 *given channel exceeds ____ hours per week, not including*
32 *televised public meetings or classes in an accredited learning*
33 *institution, as measured on a quarterly basis. The additional*
34 *channel shall not be used for any purpose other than to continue*
35 *programming additional government, education, or public access*
36 *television.*

37 ~~(e)~~

38 *(e) Any PEG channel provided pursuant to this section that is*
39 *not utilized by the local entity for at least eight hours per day*
40 *may no longer be made available to the local entity, and may be*

1 programmed at the holder's discretion. At the time that the local
2 entity can certify to the holder a schedule for at least eight hours
3 of daily programming, the holder of the ~~state-issued authorization~~
4 *state franchise* shall restore the channel or channels for the use of
5 the local entity.

6 (d)

7 (f) The content to be provided over the PEG channel capacity
8 provided pursuant to this section shall be the responsibility of the
9 local entity receiving the benefit of that capacity, and the holder
10 of a ~~state-issued authorization~~ *state franchise* bears only the
11 responsibility for the transmission of that content, subject to
12 technological restraints.

13 (e)

14 (g) The local entity shall ensure that all transmissions, content,
15 or programming to be transmitted by a holder of a ~~state-issued~~
16 ~~authorization~~ *state franchise* are provided or submitted in a
17 manner or form that is ~~capable of being accepted and transmitted~~
18 ~~by the holder, without any requirement for additional alteration~~
19 ~~or change in the content by the holder, over the holder's~~
20 ~~particular network, and that is standard in the industry. The~~
21 ~~holder shall be responsible for any changes in the form of the~~
22 ~~transmission necessary to make it~~ compatible with the
23 technology or protocol utilized by the holder to deliver services.
24 The provision of those transmissions, content, or programming to
25 the holder of a ~~state-issued authorization~~ *state franchise* shall
26 constitute authorization for the holder to carry those
27 transmissions, content, or programming, including, at the
28 holder's option, beyond the jurisdictional boundaries of that local
29 entity.

30 (f)

31 (h) Where technically feasible, the holder of a ~~state-issued~~
32 ~~authorization~~ *state franchise* and an incumbent cable operator
33 shall negotiate in good faith to interconnect their networks for the
34 purpose of providing PEG programming. Interconnection may be
35 accomplished by direct cable, microwave link, satellite, or other
36 reasonable method of connection. Holders of a ~~state-issued~~
37 ~~authorization~~ *state franchise* and incumbent cable operators shall
38 provide interconnection of PEG channels on reasonable terms
39 and conditions and may not withhold the interconnection. If a
40 holder of a ~~state-issued authorization~~ *state franchise* and an

1 incumbent cable operator cannot reach a mutually acceptable
2 interconnection agreement, ~~then the duty of the holder of a~~
3 ~~state-issued authorization shall be discharged if the holder makes~~
4 ~~interconnection available to the channel originator~~ *the local*
5 *entity may require the incumbent cable operator to allow the*
6 *holder to interconnect its network with the incumbent's network*
7 *at a technically feasible point on the holder's network as*
8 *identified by the holder. If no technically feasible point for*
9 *interconnection is available, the holder of a state franchise shall*
10 *make an interconnection available to the channel originator and*
11 *shall provide the facilities necessary for the interconnection.*

12 ~~(g) A holder of a state-issued authorization~~

13 (i) A holder of a state franchise shall not be required to
14 interconnect for, or otherwise to transmit, PEG content that is
15 branded with the logo, name, or other identifying marks of
16 another cable operator or video service provider. *For purposes of*
17 *this section, PEG content is not branded if it includes only*
18 *production credits or other similar information displayed at the*
19 *conclusion of a program.* The local entity may require a cable
20 operator or video service provider to remove its logo, name, or
21 other identifying marks from PEG content that is to be made
22 available through interconnection to another provider of PEG
23 capacity.

24 (j) *In addition to any provision for PEG channels required*
25 *under subdivisions (a) to (k), inclusive, the holder shall reserve,*
26 *designate, and activate a channel for carriage of public affairs*
27 *programming that includes live and recorded coverage of state*
28 *government and state legislative activities originated by the*
29 *California Channel and designate and activate a channel for*
30 *carriage of public affairs programming originated by C-Span.*

31 ~~(h)~~

32 (k) After the effective date of this article and until the
33 expiration of the incumbent cable operator's franchise, if the
34 incumbent cable operator has existing unsatisfied obligations
35 under the franchise to remit to the local entity any cash payments
36 for the ongoing capital costs of public educational and
37 governmental access channel facilities, the local entity shall
38 divide those cash payments among all cable or video providers as
39 provided in this section. The fee shall be the holder's pro rata per
40 subscriber share of the cash payment required to be paid by the

1 incumbent cable operator to the local entity for the capital costs
2 of public, educational, and governmental access channel
3 facilities.

4 (i)

5 (l) In determining the fee on a pro rata per subscriber basis, all
6 cable and video service providers shall report, for the period in
7 question, to the local entity the total number of subscribers
8 served with the local entity's jurisdiction, which shall be treated
9 as confidential by the local entity and shall be used only to derive
10 the per subscriber fee required by this section. The local entity
11 shall then determine the payment due from each provider based
12 on a per subscriber basis for the period by multiplying the
13 unsatisfied cash payments for the ongoing capital costs of public,
14 educational, and governmental access channel facilities by a ratio
15 of the reported subscribers of each provider to the total
16 subscribers within the local entity as of the end of the period. The
17 local entity shall notify the respective providers, in writing, of the
18 resulting pro rata amount. After the notice, any fees required by
19 this section shall be remitted to the applicable local entity
20 quarterly, within 45 days after the end of the quarter for the
21 preceding calendar quarter, and may only be used by the local
22 entity as authorized under federal law.

23 ~~(j) Upon the expiration of the incumbent cable operator's~~
24 ~~franchise or if there is no local franchise, the holder or holders of~~
25 ~~a state-issued authorization shall pay the local entity, in whose~~
26 ~~jurisdiction it is offering cable or video service, a fee to support~~
27 ~~the capital costs of public, educational, and governmental access~~
28 ~~channel facilities and to support of institutional network facilities~~
29 ~~equal to 1 percent of the holder's gross revenues, as defined in~~
30 ~~Section 53058.4, earned in the local entity or, at the holder's~~
31 ~~election, the per subscriber fee that was paid by the holder to the~~
32 ~~local entity pursuant to subdivision (h). The local entity may only~~
33 ~~use the fee for purposes allowed under federal law. The payment~~
34 ~~required by this subdivision shall not become due and payable~~
35 ~~until the expiration of the incumbent cable operator's franchise,~~
36 ~~or 180 days after the local entity notifies the holder of the~~
37 ~~expiration, whichever is later.~~

38 (m) *If there is no incumbent cable operator, or upon the*
39 *expiration of the incumbent cable operator's franchise, a local*
40 *entity may, by ordinance, establish a fee to support the capital*

1 *costs of public, educational, and governmental access channel*
2 *facilities and to support institutional network facilities. The fee*
3 *shall not exceed the per subscriber fee paid under subdivision*
4 *(k), if such a fee was paid, or ____ percent of the holder's gross*
5 *revenues, as defined in Section 53058.4, earned in the local*
6 *entity, whichever is lower. The fee shall be deposited in a special*
7 *fund established by the local entity to be used solely for the*
8 *purposes provided for in this section.*

9 ~~(k)~~

10 (n) The following services shall continue to be provided by the
11 incumbent cable operator that was furnishing services pursuant to
12 a franchise until January 1, 2008, or until the term of the
13 franchise expires, whichever is later:

14 (1) PEG production or studio facilities.

15 (2) Institutional network capacity, however defined or referred
16 to in the incumbent cable operator's franchise, but generally
17 referring to a private line data network capacity for use by the
18 local entity for noncommercial purposes.

19 (3) Cable services to community public buildings, such as
20 municipal buildings and public schools.

21 ~~(l) The holder of a state-issued authorization~~

22 (o) *The holder of a state franchise* may recover the amount of
23 any fee remitted to a local entity under this section by billing a
24 recovery fee as a separate line item on the regular bill of each
25 subscriber.

26 ~~(m)~~

27 (p) A court of competent jurisdiction shall have exclusive
28 jurisdiction to enforce any requirement under this section or
29 resolve any dispute regarding the requirements set forth in this
30 section, and no provider may be barred from the provision of
31 service or be required to terminate service as a result of that
32 dispute or enforcement action.

33 *53058.6. Holders of state franchises shall comply with the*
34 *Emergency Alert System requirements of the Federal*
35 *Communications Commission in order that emergency messages*
36 *may be distributed over the holder's network.*

37 ~~53058.6.~~

38 *53058.7. (a) The local entity shall allow the holder of a*
39 ~~*state-issued authorization*~~ *state franchise* under this article to
40 install, construct, and maintain a network within public

1 rights-of-way under the same terms and conditions as applicable
2 to telephone corporations, as defined under Section 234 of the
3 Public Utilities Code, under applicable state and federal law.

4 (b) A local entity may not enforce against the holder of a
5 ~~state-issued authorization~~ *state franchise* any rule, regulation, or
6 ordinance that purports to allow the local entity to purchase or
7 force the sale of a network.

8 ~~53058.7.~~

9 ~~53058.8.~~ (a) A cable operator or video service provider that
10 has been granted a ~~state-issued authorization~~ *state franchise*
11 under this article may not discriminate against or deny access to
12 service to any group of potential residential subscribers because
13 of the income of the residents in the local area in which the group
14 resides, as required by Section 541(a)(3) of Title 47 of the United
15 States Code.

16 (b) ~~The holder of a state-issued authorization shall have a~~
17 ~~reasonable period of time to become capable of providing cable~~
18 ~~service or video service to all households within the designated~~
19 ~~service area footprint as defined in as defined in paragraph (6) of~~
20 ~~subdivision (d) of Section 53058.2 and may satisfy the~~
21 ~~requirements of this section through the use of (1) direct-to-home~~
22 ~~satellite service or (2) another alternative technology that~~
23 ~~provides comparable content, service, and functionality.~~

24 (C) ~~Within 36 months after issuance of the holder's first~~
25 ~~state-issued authorization, and then annually for seven additional~~
26 ~~years, the holder shall report the extent to which cable or video~~
27 ~~service is available to potential subscribers within the holder's~~
28 ~~service area, including all of the following:~~

29 (1) ~~The demographics of the service area.~~

30 (2) ~~The percentage of homes in the service area that have~~
31 ~~access to service.~~

32 (3) ~~The demographics of the portion of the service area that~~
33 ~~has access to service.~~

34 (4) ~~The technology used by the holder to provide access to~~
35 ~~service.~~

36 ~~The report shall be filed with the Legislature, the department,~~
37 ~~the Governor, and the Attorney General, and posted on the~~
38 ~~holder's Web site. The holder shall not be required to report~~
39 ~~competitively sensitive information.~~

1 ~~(e) If there is a violation, the exclusive remedy for enforcing~~
2 ~~the provisions of this section shall be an action in a court of~~
3 ~~competent jurisdiction brought by the local entity, the district~~
4 ~~attorney of the county in which the local entity is located, or the~~
5 ~~Attorney General on behalf of the department. At least 60 days~~
6 ~~before bringing an action, the enforcement entity shall serve the~~
7 ~~holder of the state-issued authorization under this article with a~~
8 ~~notice setting out the alleged violation and stating that an action~~
9 ~~may be brought unless the provider, within the 60-day notice~~
10 ~~period, corrects the alleged violation or enters into a binding~~
11 ~~agreement to correct the violation. The notice shall contain a~~
12 ~~sufficiently detailed description of the alleged violation to enable~~
13 ~~the holder of the state-issued authorization to make a specific~~
14 ~~response. If the holder of the state issued franchise does not~~
15 ~~timely enter into a binding agreement to correct the violation,~~
16 ~~then the matter shall proceed before the court of competent~~
17 ~~jurisdiction.~~

18 ~~(d) If the court finds that the holder of the state issued~~
19 ~~franchise is in willful violation of Section 53058.7 herein, it may,~~
20 ~~in addition to any other remedies provided by law, impose a fine~~
21 ~~not to exceed 1 percent of the holder's total gross revenue of its~~
22 ~~entire cable and service footprint in the state in the full calendar~~
23 ~~month immediately prior to the decision.~~

24 ~~(b) It is the intent of the Legislature that the principles for~~
25 ~~competition in the provision of video service will require a level~~
26 ~~playing field to assure that competition is fair, will require~~
27 ~~widespread build-out of state-of-the-art services so that~~
28 ~~competition can benefit the greatest number of customers, and~~
29 ~~will prohibit discrimination, redlining, and service abandonment~~
30 ~~so that a lack of competition will not be detrimental to customers.~~

31 ~~53058.8.~~

32 ~~53058.9. The holder of a state-issued authorization (a) The~~
33 ~~holder of a state franchise shall comply with the provisions of~~
34 ~~Sections 53055, 53055.1, 53055.2, and 53088.2. A franchising or~~
35 ~~local entity may not adopt or seek to enforce any additional or~~
36 ~~different customer service or other performance standards under~~
37 ~~Section 53055.3, subdivision (q), (r), or (s) of Section 53088.2,~~
38 ~~or under any other authority or provision of law. Any reporting~~
39 ~~or enforcement authority in those sections shall instead be~~
40 ~~assigned solely to the department. and 53088.2, and any other~~

1 *customer service standards pertaining to the provision of video*
2 *service required to be enforced by federal law, adopted by the*
3 *department pursuant to subdivision (q) of Section 53088.2, or*
4 *adopted by subsequent enactment of the Legislature.*

5 *(b) The local entity shall enforce all of the customer service*
6 *and protection standards of this section with respect to*
7 *complaints received from residents within the local entity's*
8 *jurisdiction, but it may not adopt or seek to enforce any*
9 *additional or different customer service or other performance*
10 *standards under Section 53055.3, subdivision (q), (r), or (s) of*
11 *Section 53088.2, or any other authority or provision of law.*

12 *(c) The local entity may, by ordinance, provide a schedule of*
13 *penalties for the material breach by a holder of a state franchise*
14 *of this section. No monetary penalties shall be assessed for a*
15 *material breach if the breach is out of the reasonable control of*
16 *the holder. Further, no monetary penalties may be imposed prior*
17 *to the effective date of this section. Any schedule of monetary*
18 *penalties adopted pursuant to this section shall in no event*
19 *exceed two hundred dollars (\$200) for each day of each material*
20 *breach, not to exceed six hundred dollars (\$600) for each*
21 *occurrence of material breach. However, if a material breach of*
22 *this section has occurred and the city, county, or city and county*
23 *has provided notice and a fine or penalty has been assessed, in a*
24 *subsequent material breach of the same nature occurring within*
25 *12 months, the penalties may be increased by the city, county, or*
26 *city and county to a maximum of four hundred dollars (\$400) for*
27 *each day of each material breach, not to exceed one thousand*
28 *two hundred dollars (\$1,200) for each occurrence of the material*
29 *breach. If a third or further material breach of the same nature*
30 *occurs within those same 12 months, and the city, county, or city*
31 *and county has provided notice and a fine or penalty has been*
32 *assessed, the penalties may be increased to a maximum of one*
33 *thousand dollars (\$1,000) for each day of each material breach,*
34 *not to exceed three thousand dollars (\$3,000) for each*
35 *occurrence of the material breach. With respect to video*
36 *providers subject to a franchise or license, any monetary*
37 *penalties assessed under this section shall be reduced dollar for*
38 *dollar to the extent any liquidated damage or penalty provision*
39 *of a current cable television ordinance, franchise contract, or*
40 *license agreement imposes a monetary obligation upon a video*

1 provider for the same customer service failures, and no other
2 monetary damages may be assessed.

3 (d) If the local entity adopts a schedule of monetary penalties,
4 the following procedures shall be followed:

5 (1) The local entity shall give the video provider written notice
6 of any alleged material breaches of the consumer service
7 standards of this division and allow the video provider at least 30
8 days from receipt of the notice to remedy the specified breach.

9 (2) A material breach for the purposes of assessing penalties
10 shall be deemed to have occurred for each day, following the
11 expiration of the period specified in paragraph (1), that any
12 material breach has not been remedied by the video provider;
13 irrespective of the number of customers affected.

14 (e) This section shall not preclude a party affected by this
15 section from utilizing any judicial remedy available to that party
16 without regard to this section. Actions taken by a local legislative
17 body, including a franchising authority, pursuant to this section
18 shall not be binding upon a court of law. For this purpose, a
19 court of law may conduct de novo review of any issues presented.

20 ~~53058.9.~~

21 ~~53058.10.~~ (a) The holder of a ~~state-issued authorization~~ *state*
22 *franchise* shall perform background checks of applicants for
23 employment, according to current business practices.

24 (b) A background check equivalent to that performed by the
25 holder shall also be conducted on all of the following:

26 (1) Persons hired by a holder under a personal service
27 contract.

28 (2) Independent contractors and their employees.

29 (3) Vendors and their employees.

30 (c) Independent contractors and vendors shall certify that they
31 have obtained the background checks required pursuant to
32 subdivision (f), and shall make the background checks available
33 to the holder upon request.

34 (d) Except as otherwise provided by contract, the holder of a
35 ~~state-issued authorization~~ *state franchise* shall not be responsible
36 for administering the background checks and shall not assume
37 the costs of the background checks of individuals who are not
38 applicants for employment of the holder.

39 (e) (1) Subdivision (a) only applies to applicants for
40 employment for positions that would allow the applicant to have

1 direct contact with or access to the holder's network, central
2 office, or customer premises, and perform activities that involve
3 the installation, service, or repair of the holder's network or
4 equipment.

5 (2) Subdivision (b) only applies to person that have direct
6 contact with or access to the holder's network, central office, or
7 customer premises, and perform activities that involve the
8 installation, service, or repair of the holder's network or
9 equipment.

10 (f) This section does not apply to temporary workers
11 performing emergency functions to restore the network of a
12 holder to its normal state in the event of a natural disaster or an
13 emergency that threatens or results in the loss of service.

14 ~~53058.10.~~

15 ~~53058.11.~~ (a) A holder of a ~~state-issued authorization~~ *state*
16 *franchise* employing more than 750 total employees shall
17 annually report to the department all of the following:

18 (1) The number of California residents employed by the
19 ~~workforce holder~~, calculated on a full-time or full-time
20 equivalent basis.

21 (2) The percentage of the holder's total domestic workforce,
22 calculated on a full-time or full-time equivalent basis.

23 (3) *The types and numbers of jobs by occupational*
24 *classification held by residents of California employed by*
25 *holders of state franchises and the average pay and benefits of*
26 *those jobs and, separately, the number of corporations*
27 *headquartered outside of California.*

28 ~~(3)~~

29 (4) The number of California *and separately, the number of*
30 *out-of-state* residents employed by independent contractors,
31 *companies*, and consultants hired by the holder, calculated on a
32 full-time or full-time equivalent basis, when the holder has
33 obtained this information upon requesting it from the
34 independent contractor, *company*, or consultant, and the holder is
35 not contractually prohibited from disclosing the information to
36 the public. This paragraph applies only to those employees of an
37 independent contractor or consultant that are personally
38 providing services to the holder, and does not apply to employees
39 of an independent contractor or consultant not personally
40 performing services for the holder.

(b) The department shall annually report the information required to be reported by holders of ~~state-issued authorizations~~ *state franchises* pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

53058.12. (a) The provisions of this article are intended to be consistent with the Federal Cable Act (47 U.S.C. Sec. 521 et seq.).

(b) Nothing in this section shall be interpreted to prevent a voice provider, cable operator or video service provider, or local entity from seeking clarification of its rights and obligations under federal law or from exercising any right or authority under federal or state law.

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